United States Government
National Labor Relations Board
OFFICE OF THE GENERAL COUNSEL

Advice Memorandum

DATE: October 12, 2001

TO : James S. Scott, Regional Director
Veronica I. Clements, Regional Attorney
Bruce I. Friend, Assistant to Regional Director
Region 32

FROM : Barry J. Kearney, Associate General Counsel
Division of Advice

530-4825-6700
SUBJECT: KJEO-TV currently known as KGPE-TV 530-4875-6700
Case 32-CA-18419-1

This case, involving the sale of the membership interest in a limited liability company, was resubmitted for advice on the following issues: (1) whether, under the circumstances, the purchaser of the membership interest is a Burns successor or the legal equivalent of a stock purchaser; (2) if successorship principles apply, whether the purchaser employer is a "perfectly clear" successor that may not implement initial terms and conditions of employment without bargaining with the union; and (3) whether the employer's decision to lay off employees was lawful as inextricably intertwined with its lawful automation of certain aspects of its operations.

FACTS

The underlying facts are contained in our previous Advice Memorandum, dated May 9, 2001, and provided the basis for our conclusion that the Employer was a "perfectly clear" successor. In addition to them, the following supplementary information is relevant.

On July 28, 2000,[1] Fisher Broadcasting, Inc. ("Fisher"), at the request of the Ackerley Group (the "Employer"), distributed a leaflet ("Leaflet") to Fisher employees in anticipation of the August 1 sale of Fisher LLC (KJEO-TV) from Fisher to the Employer. The Leaflet, signed by Employer Human Resources Manager Porterfield, served a number of purposes. First, the Leaflet welcomed the then-Fisher employees to the Ackerley Group, and briefly described the Employer's business. The Leaflet then requested that the employees attend an August 1 meeting at 9:30 A.M. in order to "tell you ... about your benefits and the guidelines governing the way we work."

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[1] Unless otherwise indicated, all dates are in 2000.

The Leaflet also explained that the Employer planned to distribute certain materials that the employees would need. It further requested that employees bring certain pieces of identification to complete the paperwork necessary to start employees on the Employer payroll.

As explained in the prior Advice Memorandum, later on July 28, Employer attorney Blackstone sent a letter (by fax and certified mail) to Union representative Cleaveland officially informing the Union that the Employer was purchasing KJEO-TV, and expected to close the sale on August 1. The Employer informed the Union that it intended to maintain the then-current level of wages and benefits of Fisher employees after August 1. The Employer also asserted that there would be some differences in benefits but that it thought that employees would be better off under the Employer's plans than under Fisher's plans. Specifically, the Employer communicated that it did not intend to include bargaining unit employees in its 401(k) plan, but that it would discuss alternatives.

At the August 1 meeting, Porterfield and Employer President and Interim General Manager Reid apparently spoke on a number of issues.[2] They informed employees that the Employer would recognize and bargain with the Union, but that unit employees would not be eligible for participation in the Employer's 401(k) plan, whereas non-unit employees could participate in the plan starting on September 1. This eligibility distinction did not exist under Fisher. They also distributed brochures for each employee benefit, and an employee handbook describing the Employer's other benefits, and discussed certain benefits. For example, they indicated that bonus incentives and tuition reimbursement plans would be limited to non-unit employees. They also announced that the Employer would automate job functions through the use of Parkervision, a television filming system using robotic cameras, within several months. They identified the type of work that Parkervision would eliminate, making clear that there would be some impact on unit jobs.[3]

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[2] [*FOIA Exemptions 5, 6, 7(C), and 7(D)*

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[3] Parkervision is operated by one person in a control room using a joystick. It eliminates some employee camera work,

Later that day, the Employer purchased Fisher's membership interest in KJEO-TV and began operating the company. The Employer imposed the new benefits discussed at the August 1 meeting. The Employer completed the installation of Parkervision in March 2001.[4] Upon installation of Parkervision, the Employer laid off 15 unit employees including camera persons, floor directors, and videotape personnel. Control room directors were trained to operate the Parkervision system and were not laid off. Two of the laid-off employees were rehired by the Employer, one as a news videographer and one as a photographer in the promotions department.

ACTION

We conclude that the Region should issue a complaint alleging that the Employer, as the purchaser of the membership interest in a limited liability company, violated Section 8(a)(5) of the Act by failing to abide by the terms of the expired collective-bargaining agreement between Retlaw Broadcasting Co. ("Retlaw"), which previously owned Fisher's membership interest in KJEO-TV, and the Union.[5] [*FOIA Exemption 5*

]. Finally, we conclude that the Employer violated Section 8(a)(5) by failing to bargain over the March 15 decision to lay off 15 employees, because that decision was not inextricably intertwined with the implementation of Parkervision.

"Stock Transfer"

In determining the obligations incurred by an entity that purchases another entity, or a portion thereof, the

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floor direction, and preparation and editing of videotape portions of broadcasts.

[4] There are indications that asbestos and electrical problems delayed the installation of Parkervision.

[5] For the facts of the bargaining history between Retlaw and the Union, and between Fisher and the Union, see the May 9 Advice Memorandum.

Board distinguishes between "asset acquisition" and "stock purchase" transactions. Generally, the Board applies a successorship analysis in "asset acquisition" cases to determine whether the purchaser is obligated to bargain with the union that represented its predecessor's employees.[6] Under that analysis, the Board determines whether there is "substantial continuity in the employing enterprise," as demonstrated by continuity in the following: (1) business operations; (2) plant; (3) workforce; (4) jobs and working conditions; (5) supervisors; (6) machinery, equipment and methods of production; and (7) product or service.[7] The most critical factor is continuity of the workforce; where the employing enterprise is substantially the same and a majority of employees hired by the purchaser were employed by its predecessor, the new employer is obligated to bargain with the incumbent union.[8] Conversely, if the "predecessor majority" test is not met, the new employer has no obligation to bargain.[9]

Stock transfers are distinguished from successorship situations in that a stock transfer "involves no break or hiatus between two legal entities, but is, rather, the continuing existence of a legal entity."[10] Thus, the Board has found that a change in stock ownership "does not absolve a continuing corporation of responsibility under

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[6] See NLRB v. Burns International Security Services, 406 U.S. 272 (1972).

[7] See, e.g., Canterbury Villa, Inc., 271 NLRB 144, 145 (1984) (employer "provided the same services to the same customers without any interruptions"); Aircraft Magnesium, 265 NLRB 1344, 1345 (1982), enfd. 115 LLRM 3712 (9th Cir. 1984) (employer resumed same work, at same location, with same equipment, about four weeks after the successor ceased operations).

[8] See Burns, 406 U.S. at 281.

[9] See, e.g., Airport Bus Service, Inc., 273 NLRB 561, 562 (1984).

[10] Towne Plaza Hotel, 258 NLRB 69, 71 (1981), quoting Hendricks-Miller Typographic Co., 240 NLRB 1082, 1083 n.4 (1979).

the Act."[11] Unlike a successor, a stock purchaser must apply a collective-bargaining agreement in effect at the time of transfer.[12] A stock purchaser may be required to recognize a union and adopt a contract even where it would not meet the Burns successorship criteria.[13]

The underpinnings of the distinction between successorship and stock transfer are basic principles of corporate law. A corporation is "an entity distinct from its individual members or stockholders, who, as natural persons, are merged in the corporate identity," and it remains "unchanged and unaffected in its identity by changes in its individual membership."[14] The "corporate veil" is rarely pierced, and is never pierced at the behest of the shareholders or corporate officers but only for the benefit of an aggrieved third party.[15] Whatever the reasons for structuring a transaction as a stock purchase, rather than an asset acquisition, the corporation cannot deny its ongoing existence. Thus, a corporation that retains and continues the preexisting corporate identity, and thereby enjoys tax, leasing, or other business benefits, must also accept the contractual obligations arising out of such an arrangement.[16]

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[11] Miller Trucking Service, Inc., 176 NLRB 556 (1969).

[12] See Topinka's Country House, Inc., 235 NLRB 72, 75 (1978), enfd. 624 F.2d 770 (6th Cir. 1980).

[13] See Rockwood Energy and Mineral Corp., 299 NLRB 1136 (1990) (stock purchaser required to recognize union and apply extant collective bargaining agreement despite a five year hiatus in operations and its nondiscriminatory hiring of a majority of employees from outside the ranks of the "predecessor's" employees). Citing Hendricks-Miller, the Board noted that the transaction was a "stock transfer" which "preserved [the employer's] status as a corporation and as an employing entity." Id. at 1139.

[14] Topinka's Country House, 235 NLRB at 74, citing 18 Am. Jur. 2d Corporations, sec. 13.

[15] See EPE, Inc., 284 NLRB 191, 198 (1987), enfd. in pertinent part 845 F.2d 483 (4th Cir. 1988).

[16] See Miami Foundry Corp., 252 NLRB 2, 6 (1980), enfd. 682 F.2d 587 (6th Cir. 1982) ("fact that Respondents, after due consideration of the legal consequences, made a choice in

Similar principles govern the transfer of a party's membership interest in a limited liability company, which is also a legal entity distinct from its one or more member owners. A limited liability company possesses a "corporate veil" that shields individual members (owners) from both vicarious personal liability for the actionable conduct of other members, and from the debts, obligations and liabilities of the company.[17] Accordingly, we conclude that, as a general rule, members who transfer membership interests in limited liability companies incur a concomitant obligation to adopt an extant, or abide by the terms of an expired, collective-bargaining agreement.

Here, Fisher sold its entire interest in KJEO-TV to the Employer. Although Fisher and the Union had never reached a collective-bargaining agreement after Fisher took over KJEO-TV from Retlaw in 1999, Fisher abided by the terms of the Union's contract with Retlaw, which expired in 1993. Consequently, the Employer must maintain the terms and conditions of employment set forth in the expired Retlaw contract until it bargains to agreement or a good faith impasse, because the Employer's purchase of Fisher's membership interest in KJEO-TV continued intact the same employing entity (Fisher) that was renegotiating the terms of the expired Retlaw agreement.

In determining that the rules regarding "stock purchases" apply here, we would distinguish Spencer Foods, Inc.[18] and Holly Farms Corp.[19] In Spencer Foods, the Board

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favor of their financial interests cannot now be utilized as a defense to violations of the Act").

[17] See DEL. CODE ANN. tit. 6, § 18-303 (2000) ("[T]he debts, obligations, and liabilities of a limited liability company … shall be solely the debts, obligations and liabilities of the limited liability company, and no member or manager shall be obligated personally for any such debt, obligation or liability … by reason of being a member or acting as a manager"). In addition, a limited liability company provides the advantageous pass-through tax status of partnerships. See id. at § 18-1107.

[18] 268 NLRB 1483, 1484-1485 (1984), rev'd in pertinent part, 768 F.2d 1463 (D.C. Cir. 1985).

[19] 311 NLRB 273, 277 (1993), enfd. 48 F.3d 1360 (4th Cir. 1995).

applied a Burns successorship analysis to an alleged stock transfer because the purchaser had made significant changes in the predecessor's operation. The Board noted that successorship principles apply to stock transfers unless there is a "mere substitution of one owner for another through a stock transfer within the context of an ongoing enterprise."[20] Despite broad language in earlier cases regarding fundamental differences between stock transfers and asset purchases,[21] the Board distinguished those cases on their facts, as involving ongoing operations, without hiatus, where the stock purchasers had retained the employees and made no operational changes. In Spencer Foods, there was a long hiatus and operational changes that included the elimination of four of six facilities and one of two work shifts, which reduced a 420-employee complement by almost half, and the conversion of one of its beef slaughtering facilities to a solely kosher operation. Moreover, the Board noted that the purchaser spent about ten percent of the purchase price on substantive plant improvements, and began to realign the respondent entity as part of its large agricultural cooperative.[22] In terms of employees, the purchaser hired a new staff, of which only one-third were former unit employees, as well as a new board of directors, plant manager, and supervisors.[23] The Board also found that the transfer in Spencer Foods resembled an assets purchase in that the purchaser obtained a guarantee from prior shareholders that they would purchase four unwanted facilities if these could not otherwise be sold, and the purchaser did not in fact acquire those facilities.

Here, there was no operational or legal hiatus; the Employer continued Fisher's operation of KJEO-TV on August 1 without any break in operations, and the limited liability company never ceased to exist as a legal entity. Furthermore, there was no change or shift in the focus of the enterprise's operation after August 1; the Employer continues to provide television programming services to the

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[20] 268 NLRB at 1484-85, n.5.

[21] See, e.g., Hendricks-Miller Typographic Co., 240 NLRB at 1083, n.4.

[22] 268 NLRB at 1484. The employer amended its articles of incorporation so it could operate as a farming cooperative, id. at 1498.

[23] See id. at 1484.

same customers. Although the Employer installed Parkervision, thus reducing the number of employees, it did not make the kind of comprehensive changes in operations that were made in Spencer Foods.

In Holly Farms Corp.,[24] the Board applied successorship principles even though the transaction at issue was technically a stock sale and the predecessor corporation continued to exist as a corporate entity. The Board noted that the successor's purchase of the predecessor's stock "involved at the outset a broader form of reorganization."[25] On the purchaser's assumption of control, it immediately began implementing predetermined plans to substantially change the predecessor employing entity in order to integrate it with existing operations. As part of this process, the successor absorbed the predecessor's transportation and production facilities into its own.[26] Even though after this integration the predecessor "engaged in the same business operations at the same location selling the same products ... [with] a majority of the employees [that] were previously employees of the predecessor,"[27] the planned functional integration of the companies created a new employing entity, and not merely the "substitution of one owner for another through a stock transfer."[28]

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[24] 311 NLRB at 277.

[25] Id.

[26] See id. at 339.

[27] Id. at 275.

[28] See id. at 277-78 (explaining how the successor's transportation division operated as a profit center within the company, whereas the predecessor's transportation division existed to transport the company's products, and generated no profit). We further note that, in Holly Farms, the employer sought to characterize the transaction as a stock transfer in order to avoid the obligations it would have as a Burns successor. It argued that there was no duty to bargain over changes, and effects of changes, made months after the takeover because the initial takeover was a pure stock transfer that kept the original employing entity intact, and the later changes resulting from the

Unlike in Holly Farms, the transaction here did not involve the complete integration of one company into another, thereby changing the scope and direction of the predecessor's business to harmonize it with the purchaser's corporate objectives. Thus, the employees here performed the same work at the same location in the same basic manner without the associated shift in the nature and scope of the business that occurred in Holly Farms.

The instant case is like EPE, Inc.,[29] where the stock purchaser, among other things, terminated a profit-sharing plan that was part of the contract with the seller, and unilaterally changed job classifications, wage structures, and working conditions. The Board, affirming the ALJ, rejected the employer's argument that it was a new employer having no duty to honor the extant collective-bargaining agreement due to the sale of the seller's stock.[30] Distinguishing Spencer Foods, the ALJ pointed to certain factors placing the transaction in the stock transfer rather than successorship category: no hiatus in operations after the transaction; continuity of product line, employees, managers, and supervisory personnel; and the lack of immediate modernization of machinery. With respect to the last factor, the ALJ said that, even after modernizing equipment, the same employees produced the same products. Consequently, the changes "amount[ed] merely to an improvement in the old operation, not a discontinuance of the old operation."[31] The ALJ concluded that in light of these factors, the employer "remain[ed] the same corporate entity ... and that its obligations to [the union] and to its employees remain[ed] the same as they would have been if no stock acquisition had ever taken place."[32]

As in EPE, Inc., although the Employer modernized its equipment through Parkervision, the changes merely improved, and did not discontinue, the Employer's operation. Moreover, the Employer did not complete the

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integration were the setting of initial terms by an entity that had just become a Burns successor.

[29] 284 NLRB at 192.

[30] See id. at 193.

[31] Id. at 199.

[32] Id. at 200.

installation of Parkervision until March 2001, well after the August 1 stock purchase. Therefore, unit employees performed the same work at the same location with the same equipment for the same customers for seven months after the takeover. After March, the Employer laid off only one-fourth of the unit, which indicates that a vast majority of employees performed the same work even after the implementation of Parkervision.

We therefore conclude that the Employer, as a stock purchaser, violated the Act by making unilateral changes in extant terms and conditions of employment when it obtained Fisher's membership interest in KJEO-TV.

"Perfectly Clear" Successorship

[*FOIA Exemption 5*

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In Canteen Co.,[34] the Board found a "perfectly clear" successorship where the employer expressed its intent to have the predecessor employees serve a probationary period (thus communicating an intent to retain them), but did not at that time mention the possibility of any other changes in initial terms and conditions of employment.[35] The Board

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[33] [*FOIA Exemption 5*

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[34] 317 NLRB 1052, 1053 (1995), enfd. 103 F.3d 1355 (7th Cir. 1997).

[35] See id. at 1052; see also Fremont Ford, 289 NLRB 1290, 1296-97 (1988) (initial bargaining obligation imposed under "perfectly clear" exception where new employer manifested intent to retain the predecessor's employees, and did not announce significant changes in initial terms and conditions of employment until it conducted hiring interviews); Roman Catholic Diocese of Brooklyn, 222 NLRB 1052 (1976), enf. denied in relevant part sub nom. Nazareth Regional High School v. NLRB, 549 F.2d 873 (2d Cir. 1977) (Board imposed an obligation to bargain over initial terms

held that the employer was not entitled to unilaterally implement new wage rates thereafter. Similarly, in East Belden Corp.,[36] the Board applied the "perfectly clear" exception where the employer announced its intent to retain the entire predecessor bargaining unit, while indicating that at some time in the future it would implement certain unspecified changes in terms and conditions of employment.

More recently, in DuPont Dow Elastomers LLC,[37] the employer announced to the unions on November 15 that it intended to offer employment to all incumbent employees under terms and conditions to be announced later. Two weeks later, the employer stated that it would not honor the extant collective-bargaining agreements, but would maintain the employees' wages and benefits under those contracts, adding only a "hiring incentive bonus or success sharing."[38] In concluding that the employer was a "perfectly clear" successor as of November 30, and thus obligated to bargain as of that date, the Board stated:

> The Respondent had announced its clear intent to hire the DuPont unit employees on November 15, while at the same time stating that it would disclose the terms and conditions of employment on November 30. On that later date, the Respondent did not announce any new terms and conditions of employment other than success sharing, thus leading employees to believe that they would be employed on substantially the same basis as before.[39]

The Board emphasized that "the addition of success sharing - the only announced change - would have enhanced,

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of employment prior to the new employer's extension of formal offers of employment to the predecessor's employees where the employer made an unequivocal statement to the union of an intent to hire all of the predecessor's lay teachers, and did not mention any changes in terms and conditions of employment).

[36] 239 NLRB 776, 793 (1978), enfd. 634 F.2d 635 (9th Cir. 1980).

[37] 332 NLRB No. 98 (2000).

[38] Id., slip op. at 2.

[39] Id.

not diminished, the likelihood that employees would accept the offers." This supported the conclusion that the employer intended to retain the predecessor's employees without any significant changes. Thus, "up to and beyond the time of making formal offers of employment to all affected DuPont employees, [the successor] manifested a clear desire to retain all those employees under existing working conditions."[40] As a remedy, the Board ordered rescission, upon request, of all changes made on April 1, the date the employer began operations.

[*FOIA Exemptions 6, 7(C), and 7(D)*], we conclude that the Employer sufficiently informed employees of its intent to implement Parkervision and, possibly, of intended changes in employee benefits, so as to preclude it from being a "perfectly clear" successor. The Leaflet simultaneously informed the then-Fisher employees that the Employer intended to hire them on August 1 when it took over operations and that the Employer would announce the employees' benefits, as well as the guidelines under which they would work, in a meeting on that date between Employer management and employees. At that meeting, [*FOIA Exemptions 6, 7(C), and 7(D)*] the Employer discussed Parkervision and its likely negative effects on job functions or positions, and may have discussed changes in employee benefits.[41] The August 1 meeting occurred at 9:30 A.M., before the 11:35 A.M. KJEO-TV sale transaction took place.

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[40] Id., slip op. at 6.

[41] [*FOIA Exemption 5*].

We note that, although the Leaflet did not specifically state any changes in terms and conditions of employment, it at least left open the possibility that on August 1, the Employer would tell employees that their benefits would be different after the sale took place. The Leaflet's language at least suggests that the Employer intended to inform employees that their benefits would change. The language is no more vague than the announcement in Dupont Dow, where the employer declared that it would notify employees of their terms and conditions in 15 days.

We also conclude that the Employer's July 28 letter to the Union did not negate the Leaflet's announcement that the Employer would discuss employee benefits on August 1. On July 28, the Employer informed the Union that it would "generally maintain the current level of wages and benefits," but further indicated "that there are some differences in benefits" from those provided by Fisher. So long as the Employer announced or otherwise informed employees as to these "differences in benefits" at the August 1 meeting, the letter to the Union was not inconsistent with the Leaflet. Moreover, the letter to the Union said nothing to indicate that the Employer would maintain all of the same working conditions. Therefore, the Employer lawfully could announce on August 1 its intent to utilize and implement Parkervision, and to make other changes, without bargaining with the Union.

In reaching this conclusion, we do not rely on the Region's determination that the Board in Ridgewell's, Inc.[42] changed the criteria that an employer must satisfy in order to avoid becoming a "perfectly clear" successor. There, the successor employer informed the union that it would use the predecessor's employees, but on an independent contractor basis.[43] The Board held that this announcement, made prior to hiring the employees, clearly signaled that initial terms and conditions of employment would differ from the terms and conditions reflected in the union's contract with the predecessor contractor.[44] That holding is fully consistent with Canteen Co.[45] and other cases applying

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[42] 334 NLRB No. 9 (May 18, 2001).

[43] See id., slip op. at 1.

[44] See id.

[45] 317 NLRB at 1053.

Spruce Up. Although the Board in Ridgewell's noted that the employer had announced its intent to change terms and conditions of employment before it hired the predecessor's employees (as opposed to before it announced its intent to hire those employees), the employer in fact satisfied the Spruce Up standard - it simultaneously announced its intent to employ the predecessor's employees, and that it would employ them as independent contractors.

Failure to Bargain over Lay-off Decision

The Region should allege that the Employer unlawfully failed to bargain over the decision to lay off 15 employees after the implementation of Parkervision in March 2001, because the decision to lay off employees was not "inextricably intertwined" with the decision to implement Parkervision.

In Litton Financial Printing,[46] the Board held that the employer unlawfully failed to bargain over a decision to lay off employees resulting from a change in the production process. The Board held that the lay-off decision was not so inextricably intertwined with the Employer's decision to convert the process by which it printed its products, because the lay-off decision was only one of a number of potential responses to changed circumstances. For example, the employees could have been retrained to work the new equipment or to transfer to available jobs. Moreover, three of the 10 laid-off employees had not worked exclusively on the old machinery. Consequently, the Board held that the employer had to bargain over the decision to lay off the 10 employees as an effect of the conversion decision.[47]

Similarly, in Fast Food Merchandisers,[48] the Board held that the employer was obligated to bargain about the decision to terminate employees because it was not inextricably intertwined with the decision to transfer its operations to another facility. The Board determined that, even though the elimination of unit jobs was the direct

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[46] 286 NLRB 817, 819-20 (1987), enfd. in pertinent part 893 F.2d 1128 (9th Cir. 1990), rev'd on other grounds 501 U.S. 190 (1991).

[47] See id. at 820.

[48] 291 NLRB 897, 900 (1988).

result of a substantial transfer of work to the new facility, the employer was still obligated to bargain over the lay-off decision because "there was clearly room for bargaining over the layoffs themselves."[49] The Board noted that the employer had other available options besides laying off employees: employees might have been offered the right to transfer to another facility, and the union might have had the opportunity to bargain about the possibility of making single lay-offs from each shift at the old facility, instead of the complete elimination of one shift.[50]

Likewise, the Union here could meaningfully have bargained over and offered alternatives to the decision to lay off the 15 employees. The Region notes that the Employer could not have offered employment at its other facilities because they were not in the Fresno area. The Employer, however, has 15 facilities, most in California. Even if none were near Fresno, the laid-off employees might have accepted employment at one of the other California facilities, or at a facility elsewhere. Furthermore, the parties might have bargained over retraining employees to operate Parkervision or for other positions not impacted by Parkervision. In fact, control room directors were trained to operate Parkervision and were not laid off, and two of the laid-off employees were re-hired by the Employer. Even if there were not enough positions to give to all of the laid-off employees, the parties could have negotiated an alternative scenario, such as retaining the employees in part-time positions.[51] Since the lay-off decision was not inextricably intertwined with the decision to implement Parkervision, it was not an "initial term" lawfully set by the Employer when it took over operations.[52]

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[49] Id.

[50] See id.

[51] See, e.g., Litton Financial Printing, 286 NLRB at 823 n.8 (suggesting that the union could have arranged for employees to work a shorter workweek in whatever positions were open).

[52] As discussed in Catholic Healthcare West Bay Area, Case 32-CA-17786, Advice Memorandum dated Feb. 28, 2000, we would not argue that the Employer unlawfully failed to bargain over the lay-off decision as an effect of the decision to implement Parkervision. Thus, the lay-off decision here was a mandatory subject of bargaining in its

Accordingly, the Region should issue an 8(a)(5) and (1) complaint, absent settlement, consistent with the foregoing.

B.J.K.

own right because it was not among the initial employment terms set on August 1.